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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Equatorial Guinea

Information supplementing the report submitted to the Commission by the Expert, Mr. Fernando Volio Jiménez, appointed in accordance with its resolution 1990/57

1. As I indicated in my report (E/CN.4/1991/54 and Add.1), submitted in accordance with my mandate, the Centre for Human Rights, in co-operation with the Government of Spain, provided in 1990 the advisory services of two Spanish consultants to help the authorities of Equatorial Guinea in the work of codifying the country's basic civil and criminal legislation. Unforeseen circumstances prevented Mr. Alvarez Vita from carrying out an assignment programmed for the beginning of 1991 to assist the Government in preparing the initial reports under the treaties. Mr. Sanz Bayón, a Spanish supreme court judge, and Mr. Corbí, a lawyer, carried out their mission to Equatorial Guinea in November and December 1990.

2. In the course of that mission, preliminary work began on the drafting of the new civil and criminal codes together with the corresponding laws on procedures. According to the consultants a start was made, at the working sessions held with the respective committees of Guinean jurists appointed for the purpose, on preparing the preliminary draft of the general part of the criminal code (Book I) and the initial section of the civil code; a programme of work was drawn up with appropriate directives so that the committees could complete the drafting of both legal codes in 1991. In this programme provision was included for the work performed by the legislative committees

to be reviewed every four months by the Spanish experts, who would go to the country for one or two weeks to inspect and finalize the definitive drafting of these legal codes. These activities would be conducted in co-ordination with the Expert.

3. For 1991 it is planned to draft the laws on civil and criminal procedure. This would require the logistic support and advisory assistance of the Spanish experts.

4. The advisers point out that Equatorial Guinea has no official gazette or analogous periodical to publish laws in course of preparation or coming into force. The present system of promulgation of legislation, only through radio and television, makes it difficult for citizens, whether nationals or aliens, and even for the courts themselves to obtain information on legal instruments being drafted.

5. The Spanish advisers recommend that:

> "The State of Equatorial Guinea be provided with the essential tools whereby legislation can be placed on written record through its publication in some kind of Government periodical; it would also be desirable to publish a compilation of all legislation promulgated '_ex novo_' since the 'freedom coup' of 3 August 1979. The codification and presentation in written form of customary law would require a meticulous survey throughout the Continental region of Equatorial Guinea for accurate cataloguing of legal usages and customs routed in popular tradition".

> "In the long term, measures must be taken for the progressive and continuous training of the judiciary and auxiliary staff, by providing that Guinean citizens completing the degree course in law are awarded a fellowship of at least one year's duration to enable them, through the school of law or a similar institution, to acquire better theoretical and practical training in legal methods. Similarly, the short courses for training auxiliaries should continue for two or three years."

6. The Spanish advisers selected nine candidates to take an _ad hoc_ legal training course under a programme of fellowships that will be granted them by the Government of Spain. This kind of training for key legal staff is something I have been pointing to as an essential priority.

7. As regards the functioning of the judicial system, Mr. Sanz Bayón indicates that this system has been affected by the inadequacy of the installations and a shortage of equipment and materials "bordering on destitution"; the judiciary staff, with very few exceptions, lack proper legal training and, in many cases university degrees; the glaring inadequacy of the salaries is conducive to corruption.

> "If to this we add the lack of corporate independence, with judges and magistrates being freely appointed and dismissed by the President of the Republic as authorized by the second transitional provision of the Constitution, and the pressures and influence exercised by the powers that be, preventing the free exercise of judicial functions, we cannot conclude otherwise than by emphasizing the lack of any effective judicial authority to safeguard the rule of law and the protection of civic rights".

"The almost total lack of material resources, the scanty legal training of the judges, the inadequacy of their emoluments, the lack of auxiliary personnel with even a minimum of training, and the political and social context in which the legal system operates rule out any effective and radical solution to remedy the situation in the short term. It is, on the other hand, possible to devise measures for mitigating this deplorable state of affairs."

8. In the first place, the advisers recommend:

"The immediate formation of a body of officials and auxiliaries for the administration of justice, with sufficient background to ensure that the procedural aspects of the judicial process are conducted with the minimum of care, efficiency and dispatch that they merit."

9. For this, an effective emergency solution might be:

"the transfer to Equatorial Guinea of one or two officials of the Spanish administration who could give an intensive accelerated training course of some six months' duration to communicate their knowledge to groups of four or five persons at most, selected beforehand from among the best qualified, and thus bring their training up to a sufficient level for the application of the various procedures. To supplement those courses after their completion the officials concerned should work at a Spanish court for a further two months to familiarize themselves with day-to-day legal practice."

10. Short-term training of judges could be conducted through:

"advanced courses of at least a year's duration that would be held at the law school or some ad hoc university department and whose purpose should be an eminently practical form of training aimed at endowing those selected with adequate knowledge of legal methods, both material and procedural, as well as with the requisite moral integrity."

11. The advisers recommend, as a measure to supplement the above-mentioned training courses, the appointment of a magistrate to go to Equatorial Guinea and perform advisory functions on the administration of justice.

12. The Spanish advisers emphasize that it is essential for the various judicial organs to be equipped with typewriters, legal texts and books required for the discharge of their functions.

13. In addition, during his mission the lawyer Mr. Corbí conducted studies on: (a) the notarial system; (b) the property and trade register; and (c) the civil register, drawing up a number of recommendations on their functioning.

14. Further, during their visit to Equatorial Guinea the two Spanish advisers received oral information on serious allegations of human rights violations. Two letters delivered to them by opposition groups for transmittal of their contents to the Expert also contain serious allegations of human rights violations. All this information was communicated to me on 2 March 1991 on my arrival in Geneva.

15. Again, I wish to report that the Spanish consultants also informed me that on 16 October 1990 Decree-Law No. 7/90 establishing the Committee on Human Rights in Equatorial Guinea was promulgated. This Committee will be attached to the Chamber of Peoples' Representatives and will be made up of the permanent officers of the Chamber in addition to the members designated at his discretion by the President of the Republic. The Committee will be entitled to receive complaints and in such case take steps to investigate possible violations within the country and make appropriate recommendations to the President of the Republic, who in the light of those recommendations will adopt suitable measures to restore respect for the rights violated and repair any damage caused. To date no information at all has been received on the membership of this Committee or on its starting work.

16. I should like to take this opportunity of making the following points: (a) I am greatly concerned at the fact that there is still at this time in Equatorial Guinea no proper institutional framework for the protection of human rights, despite the significant progress made in that direction since 1979 when I made my first visit to the country in my then capacity of Rapporteur. (b) I realize, of course, that the fact of being a country small in area, with very low population density, much poverty and a lack of qualified human resources to form the necessary cadres for the promotion of economic and social development constitutes in itself a major limiting factor on the effort required to achieve in Equatorial Guinea the desired goal in the sphere of human rights protection. (c) There has not been sufficient political will on the Government's side to put into effect as should have been done the Plan of Action which since 1982 has served as a model for the purpose of strengthening the democratic process and thus duly protecting human rights. (d) This situation is aggravated by the fact that there exist in the country no social organizations, including political parties, whereby the cause of democracy and in particular of human rights could be advanced. Furthermore, the Government is not encouraging the return home, to take part in the pluralist life of society, of those who have been driven into exile and who by virtue of their professional qualifications and democratic ideals can contribute positively to establishing the indispensable pluralist system characteristic of representative democracy. (e) To the above-described situation must be added among other things, and as a matter of especial importance and urgency, the lack of any proper system for legal protection of fundamental liberties in accordance with the minimum standards accepted everywhere. This circumstance, to which I have referred above, as also in other reports, is due in particular to the lack of sufficient legally trained persons to undertake the delicate and essential tasks of administration of justice, as also to the lack of a school to train lawyers. (f) I am concerned at the fact to which I drew attention in paragraphs 11 and 12 of my report E/CN.4/1991/54, i.e., the lack of response on the Government's part to my recommendations and to those of the Commission on Human Rights in its resolution 1990/57, namely that the Government should:

> "(a) establish as soon as possible a Special Review Commission to monitor the Plan of Action and to adopt other measures suggested for the purpose of promoting and protecting human rights;
>
> (b) draw up a General Associations Act to facilitate the implementation of the human rights recognized in the International Covenant on Human Rights ratified by Equatorial Guinea;

(c) endeavour to facilitate the repatriation of all refugees and exiles, inter alia by adopting measures permitting the full participation of all citizens in the country's political, economic, social and cultural affairs, thus helping to resolve the shortage of specialized personnel."

I am also concerned at the non-ratification of the United Nations Convention against Torture. (g) My disquiet on all these scores is heightened by reports, which I have not been able to verify myself, including one dated 10 January 1991 that was prepared by Amnesty International on the human rights situation in Equatorial Guinea and has been distributed to the Commission as document E/CN.4/1991/NGO/27. Upon reading it I decided to bring it to the attention of the Government of that country so as to determine its reaction. The message which was accordingly transmitted in a telegram by the Centre on Human Rights on 19 February 1991 is reproduced in document E/CN.4/1991/54/Add.1. No reply at all has as yet been received from the Government.

17. In the light of what I have stated in my report and in this presentation, I feel that we must rethink the present strategy for considering the human rights situation in Equatorial Guinea, with the aim of devising new approaches that would freshen and invigorate relations between the Government of Equatorial Guinea and the United Nations in the sphere of human rights protection, from the standpoint of the interests of the noble and intelligent people constituting that nation, and having at all times due regard to the salient cultural characteristics that distinguish it and that must enrich any new programme of activities it is decided to undertake, as I have just suggested. In other words, I feel we have exhausted the model which has been applied until now for considering the human rights situation in Equatorial Guinea and must therefore devise another one to replace it and overcome the present deadlock. To this end I suggest that a meeting be held here in Geneva between representatives of the Government, the Chairman of the Commission on Human Rights, and staff of the United Nations Centre for Human Rights, so that, guided by the general directives of the Commission, they can agree upon a new starting point that will lead to a more productive relationship than has operated hitherto.

18. For the attainment of the objectives of this new strategy the mandate of the expert on Equatorial Guinea would have to be broadened and strengthened so that, in investigating the human rights situation in that country, he can consider allegations of possible human rights violations and conduct inquiries on the spot.

19. I should like to express my deep appreciation to the two Spanish advisers, Mr. Sanz Bayón and Mr. Corbí, who visited Equatorial Guinea, for the valuable co-operation afforded and the great work they accomplished during the time they stayed in the country. My thanks also go to the Spanish Government for providing the facilities to enable them to do their work. I also express my gratitude to the Government of Equatorial Guinea for the assistance it gave to the Spanish advisers.

20. I wish, finally to avail myself of this opportunity to express my gratitude to the Centre for Human Rights and the staff of the advisory services for their valuable co-operation in the discharge of my mandate.